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10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 OAKLAND DIVISION  
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SECURITIES AND EXCHANGE COMMISSION, )  
17 vs. )  
18 IGORS NAGAICEVS, )  
19 Defendant. )  
20 \_\_\_\_\_ )

Case No. CV-12-0413-CW

PLAINTIFF SECURITIES AND  
EXCHANGE COMMISSION'S  
MOTION FOR  
AUTHORIZATION TO SERVE  
DEFENDANT IGORS  
NAGAICEVS BY EMAIL

Date: November 15, 2012  
Time: 2:00 p.m.  
Courtroom: 2  
Judge: Claudia Wilken

**PLAINTIFF'S MOTION FOR SERVICE BY EMAIL**

PLEASE TAKE NOTICE that on Thursday, November 15, 2012, at 2:00 p.m., in Courtroom 2 of the Ronald Dellums Federal Building, 1301 Clay Street, Oakland, California 94612, plaintiff Securities and Exchange Commission ("Commission") will move the Court for permission to serve defendant Igors Nagaicevs ("Nagaicevs") with the Summons, Complaint and other pleadings by email in accordance with Rule 4(f)(3) of the Federal Rules of Civil Procedure. Such email service upon Nagaicev is appropriate because (1) service by email is reasonably calculated to provide Nagaicevs with notice of the Summons and Complaint, (2) service by email upon Nagaicevs is not prohibited by international law or agreement and (3) an effort to personally serve Nagaicevs at his last-known address in Latvia has been unsuccessful.

This Motion will be based upon the attachment Memorandum of Points and Authorities, the Supporting Declaration of John S. Yun, the [Proposed] Order, the pleadings on file, and such other evidence and argument as the Court chooses to entertain.

DATED: October 11, 2012

Respectfully submitted,



John S. Yun  
Attorney for Plaintiff  
SECURITIES AND EXCHANGE COMMISSION

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. PROCEDURAL BACKGROUND**

Plaintiff Securities and Exchange Commission (“Commission”) filed its Complaint against defendant Igors Nagaicevs (“Nagaicevs”) on January 26, 2012, alleging a stock price manipulation scheme whereby Nagaicevs illegally accessed the accounts of customers at large broker-dealer firms in the United States. After gaining access to a customer’s brokerage account, Nagaicevs placed unauthorized orders to buy or sell an exchange-listed security for the purpose of moving that security’s share price. Using other accounts that Nagaicevs had opened at unregistered trading firms in the United States, Nagaicevs was able to establish another position in the security in order to profit from the security’s price movements following the trades that he had placed in the hijacked brokerage accounts. Complaint, ¶ 1 (Docket No. 1).

The Commission alleges that from June 2009 through August 2010, Nagaicevs hijacked customer accounts on at least 159 occasions and placed trades affecting the market price of 104 securities listed on the New York Stock Exchange or NASDAQ. *Id.*, ¶ 2. Through trading in his own accounts at the unregistered trading firms, Nagaicevs generated over \$850,000 in illegal profits for himself. Meanwhile, the customers of the hijacked accounts suffered over \$2 million in losses that were reimbursed by the brokerage firms holding the hacked accounts. *Id.*, ¶ 3. This stock manipulation scheme violated the anti-fraud provisions in Section 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934 and Section 17(a) of the Securities Act of 1933.

As part of his price manipulation scheme, Nagaicevs opened trading accounts at least eight unregistered trading firms, including KM Capital Management (“KM Capital”), Mercury Capital, World Trade Securities L.L.C. (“World Trade”), and Broad Street Trading (“Broad Street”). Additionally, Nagaicevs used a firm named Cambridge Trader’s Institute (“Cambridge”) to open accounts at Zanshin Enterprises (“Zanshin”) and Active Trading, Inc. Supporting Declaration of John S. Yun (“Yun Declaration”), ¶¶ 3-7. For his accounts at Mercury Capital, World Trade, Zanshin and Active Trading, Nagaicevs provided a street address number at Dzirksteles, Jurmala, Latvia. Yun Declaration, Exhibits 2, 4, 5. For all of his trading accounts, Nagaicevs also provided “lemantek@gmailcom” as his email address. *Id.*, Exhibits 1, 2, 3, 4, 5. Nagaicevs also provided

1 some of the trading firms with banking and corporate documents which referred to an entity named  
2 Lemantek LTD. *Id.*, Exhibits 2, 4, 5.

3 In September 2009, Nagaicevs used the lemantek@gmail.com email address to communicate  
4 with Richard Rizzo of Cambridge about his account activities. *Id.*, ¶ 7 and Exhibits 6. In mid-  
5 September 2010, Nagaicevs used the lemantek@gmail.com address to communicate with KM Capital  
6 regarding the trading proceeds in Nagaicevs account at KM Capital. *Id.*, ¶ 8 and Exhibit 7.

7 According to Google's subscriber information, Nagaicevs's lemantek@gmail.com account was  
8 opened on April 1, 2009, and remained open as of October 15, 2010. *Id.*, ¶ 9 and Exhibit 8.

9 After filing this action, the Commission obtained Latvian translations of the Summons,  
10 Complaint and other court documents and attempted to serve Nagaicevs using the procedures  
11 specified in the Hague Convention on Service Abroad of Judicial and Extra Judicial Documents in  
12 Civil or Commercial Matters ("Hague Convention"). On April 17, 2012, the Commission submitted  
13 a written request to the Latvian Central Authority at the Ministry of Justice ("Latvian Central  
14 Authority") to personally serve Nagaicevs with the Summons, Complaint and other documents at the  
15 Dzirksteles 8a-2, Jurmala, Latvia address that Nagaicevs used to open most of his trading accounts.  
16 Yun Declaration, Exhibit 9. On July 20, 2012, however, the Division of Courts Cooperation at the  
17 Latvian Ministry of Justice mailed a notice to the Commission's counsel stating that the Summons,  
18 Complaint and other documents were being returned because "the addressee cannot be located." Yun  
19 Declaration, Exhibit 10 at 1, 3. The Commission's counsel received the notice and returned papers by  
20 mail on August 7, 2012. *Id.*, Exhibit 10 at 1.

## 21 II. LEGAL ARGUMENT

### 22 A. RULE 4(f)(3) PERMITS EMAIL SERVICE UPON NAGAICEVS.

23 Because Nagaicevs is in a foreign country, the Commission may serve him with the Summons  
24 and Complaint by using the provisions of Rule 4(f) of the Federal Rules of Civil Procedure. Fed. R.  
25 Civ. Pro. 4(f) (authorizing service upon individuals in a foreign country). According to Rule 4(f)(1),  
26 the Commission may serve Nagaicevs by employing "an internationally agreed means reasonably  
27 calculated to give notice, such as those authorized by the Hague Convention." Fed. R. Civ. Pro.  
28 4(f)(1). As demonstrated above, the Commission was not successful in serving Nagaicevs at his

Latvian street address by employing the Hague Convention. Yun Declaration, Exhibits 9 and 10.

As an alternative to service under the Hague Convention, Rule 4(f)(3) of the Federal Rules of Civil Procedure provides that an individual in a foreign country may be served “by other means not prohibited by international agreement as may be directed by the court.” Fed. R. Civ. Pro. 4(f)(3). By virtue of “this plain language, service under Rule 4(f)(3) must be (1) directed by the court; and (2) not prohibited by international agreement. No other limitations are evident from the text. In fact, as long as court-directed and not prohibited by an international agreement, service of process under Rule 4(f)(3) may be accomplished in contravention of the laws of the foreign country.” *Rio Properties, Inc. v. Rio International Interlink*, 284 F.3d 1007, 1014 (9th Cir. 2002) (citing *Mayoral-Amy v. BHI Corp.*, 180 F.R.D. 456, 459 n. 4 (S.D. Fla. 1998)). Under Rule 4(f)(3), plaintiffs may obtain judicial authorization for a “wide variety of alternative methods of service including . . . email.” *Id.* at 1016. Courts in the Northern District of California have therefore authorized service by email upon foreign defendants. *E.g., Craigslist, Inc. v. Temple*, 2010 U.S. Dist. LEXIS 144411 at \*3-4 (N.D. Cal. May 20, 2010) (Ware, C.J.) (authorizing email service upon Canadian defendant after citing Northern District cases previously approving email service).

**B. EMAIL SERVICE PROVIDES NAGAICEVS WITH PROPER NOTICE.**

In *Rio Properties, supra*, the Ninth Circuit affirmed the district court’s decision to authorize service of the summons and complaint upon a Costa Rican entity by email. *Id.* at 1017. Although the Costa Rican company did not have a mailing address in the United States, the business agent at that address was not authorized to accept service of process for the Costa Rican company. The Costa Rican defendant did, however, have an email address as its preferred method for receiving communications. *Id.* at 1013. The plaintiff obtained a court order authorizing service of process by email, as well as service by sending a copy of the papers to the defendant’s mailing addresses in the United States and Costa Rica. *Id.*

According to Rule 4(h)(2) of the Federal Rules of Civil Procedure, the Costa Rican entity could be served in the same manner as a foreign individual under Rule 4(f). *Id.* at 1014. The *Rio Properties* Court found that email service satisfied Rule 4(f)(3)’s provisions because there was no claim that service upon the Costa Rican entity violated international law or lacked district court

1 authorization. *See Id.* at 1015. The *Rio Properties* Court therefore determined “without hesitation”  
2 that the service methods (including email) ordered by the district court were acceptable and  
3 “reasonably calculated, under these circumstances, to apprise [defendant] of the pendency of the  
4 action and afford it an opportunity to respond.” *Id.* at 1017.

5 In approving the propriety of email service, the *Rio Properties* Court stated that email  
6 “communication has been zealously embraced within the business community” and that the defendant  
7 had structured its business so that it could only be contacted by email. *Id.* at 1017-18. Email service  
8 is therefore appropriate when authorized by a court order. *Id.* at 1018. Under *Rio Properties*, it is left  
9 to “the discretion of the district court to balance the limitations of email service against its benefits in  
10 any particular case.” *Id.*

11 As in *Rio Properties*, email service upon Nagaicevs is reasonably calculated to afford him  
12 notice of the Commission’s action and the opportunity to respond. For at least six of the trading  
13 accounts established by Nagaicevs, Nagaicevs provided the lemantek@gmail.com email account as  
14 the method by which the trading firms could communicate with him. Yun Declaration, Exhibits 1  
15 through 5. Nagaicevs held himself out as a self-employed trader and used his trading accounts for an  
16 illegal business whereby he placed illegal trades on at least 159 occasions in 104 listed securities and  
17 derived \$850,000 in illegal profits. Significantly, when an issue arose in September 2010 between  
18 Nagaicevs and KM Capital regarding the trading proceeds in his account at that firm, Nagaicevs used  
19 his lemantek@gmail.com account to communicate with that firm. Yun Declaration, Exhibit 7.  
20 Nagaicevs therefore uses the lemantek@gmail.com email address as a preferred method of  
21 communications regarding his wrongful trading activities, while holding himself out as being  
22 associated with a business called Lemantek LTD. Delivering the Summons and Complaint by email  
23 to Nagaicevs is therefore the most reasonable method of serving him, especially given the lack of  
24 success in serving him, through Latvian authorities, at his street address. *See Rio Properties, Inc. v.*  
25 *Rio International Interlink, supra*, 284 F.3d at 1017-18 (approving use of email because of its  
26 acceptance by business community and the lack of a street address for the defendant entity); *Popular*  
27 *Enterprises, LLC v. Webcom Media Group, Inc.*, 225 F.R.D. 560, 562-63 (E.D. Tenn. 2004)  
28 (approving service by email upon defendant in Portugal where defendant’s address was unknown);



1 *Williams-Sonoma, Inc. v. Friendfinder Inc.*, 2007 U.S. Dist. LEXIS 31299 at \*4-5 (N.D. Cal. April  
2 17, 2007) (White, J) (approving email service on foreign defendants where address was unknown or  
3 mail service was refused).

#### 4 C. INTERNATIONAL LAW PERMITS EMAIL SERVICE.

5 Under Rule 4(f)(3), this Court may authorize email service upon a foreign defendant unless  
6 prohibited by an international agreement. *Rio Properties, Inc. v. Rio International Interlink, supra*,  
7 284 F.3d at 1014. The Hague Convention, of which Latvia is a signatory, does not prohibit email  
8 service upon Nagaicevs in these circumstances. First, any limitations in the Hague Convention upon  
9 methods of service do not apply when, as with Nagaicevs, the foreign government cannot achieve  
10 service because the foreign defendant's address is unknown. *See Popular Enterprises, LLC v.*  
11 *Webcom Media Group, Inc., supra*, 225 F.R.D. at 562 & n.1 (ruling that under Article 1 of the Hague  
12 Convention, there is no prohibition of email service where Portuguese Ministry of Justice lacked a  
13 valid mailing address to effectuate service); *Craigslist, Inc. v. Meyer*, 2010 U.S. Dist. LEXIS 89955 at  
14 \*6-7 (N.D. Cal. July 26, 2010) (Illston, J.) (stating that email service upon defendant in Thailand  
15 would not be prohibited by Hague Convention because defendant's mailing address was not known).

16 Second, Article 19 of the Hague Convention provides that to the "extent that the internal law  
17 of the Contracting State permits methods of transmission, other than those provided for in the  
18 preceding Articles, of documents coming from abroad, for service within its territory, the present  
19 Convention shall not affect such provisions." Yun Declaration, Exhibit 11. In Latvia, service of the  
20 Summons is governed by Article 56 of the Civil Procedure Law of the Republic of Latvia Courts  
21 ("Latvian Article 56"). Yun Declaration, Exhibit 12. According to Section (1) of Latvian Article 56,  
22 a "summons shall be sent by registered mail, by registered post with a form for acknowledgment of  
23 receipt, *electronic mail*, or it shall be delivered by a messenger. [emphasis added]" By virtue of  
24 Latvian Article 56, email service is proper, and there is no provision of international law that would  
25 prohibit email service upon Nagaicevs.


#### 26 III. CONCLUSION

27 The Court should authorize service of the Summons and Complaint upon Nagaicevs through  
28 email service. Such service is proper under Rule 4(f)(3) of the Federal Rules of Civil Procedure

1 because it is not prohibited by international law or agreement and will provide Nagaicevs with  
2 reasonable notice of this litigation.

3 DATED: October 11, 2012

4 Respectfully submitted,

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John S. Yun

7 Attorney for Plaintiff

8 SECURITIES AND EXCHANGE COMMISSION  
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